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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re ORACLE CORPORATION)	<u>Master File No. C-10-03392-RS</u>
DERIVATIVE LITIGATION)	
)	
)	ADMINISTRATIVE MOTION
)	TO CONSIDER WHETHER
)	<u>CASES SHOULD BE RELATED</u>
)	
)	(Civil Local Rule 3-12)

Pursuant to Civil Local Rule 3-12(b) and pursuant to Section I, sub-section 3 of this Court's Order Consolidating Actions, Appointing Co-Lead Counsel, and Setting Schedule for Filing of and Response to Consolidated Complaint, filed herein on February 8, 2011, Plaintiffs Lisa Galaviz and Philip T. Prince, derivatively on behalf of Oracle Corporation, the Plaintiffs in the above-captioned

1 derivative case (the “*Oracle Corporation Derivative Litigation*” action), move the Court to relate the
 2 case entitled *Scott Ozaki v. Lawrence J. Ellison, et al.*, Case No. CV-11-4493-JSC, filed in this court
 3 on September 8, 2011 (the “*Ozaki*” action), to the *Oracle Corporation Derivative Litigation*.

4 Local Rule 3-12(a) states that an action is related to another when:

- 5 1) the actions concern substantially the same parties, property,
 6 transaction, or event; and
- 7 2) it appears likely that there will be an unduly burdensome
 8 duplication of labor and expense or conflicting results if the
 cases are conducted before different Judges.

9 In Section I, sub-section 3 of its Order filed in the *Oracle Corporation Derivative Litigation* on
 10 February 8, 2011, this Court ordered:

11 3. The terms of this order shall apply to actions later instituted in, removed
 12 to, or transferred to this Court that involve the same or substantially similar issues
 13 of law and fact, subject to applicable rules. Counsel shall call to the attention of
 14 the Court and the Clerk the filing or transfer of any case which might properly be
 15 consolidated with the Consolidated Action. Mailing or other delivery of a copy of
 16 this order by counsel for defendant Oracle Corporation, or Plaintiffs’ Co-Lead
 Counsel (see II. Below),¹ as appropriate, to the counsel in any newly-filed or
 transferred actions shall constitute valid notice thereof for purposes of
 establishing its applicability to such action in accordance herewith. The file of any
 such case shall be closed upon entry of an order therein confirming that it is
 subject to consolidation under this order.

17 Here, nine of the individual defendants in both lawsuits are the same: Jeffrey S. Berg,
 18 H. Raymond Bingham, Michael J. Boskin, Safra A. Catz, Lawrence J. Ellison, Hector Garcia-Molina,
 19 Jeffrey O. Henley, Donald L. Lucas, and Naomi O. Seligman. (Former Oracle Director Charles E.
 20 Phillips is named as a defendant in the *Oracle Corporation Derivative Litigation* but is not named as a
 21 defendant in the *Ozaki* action, while Oracle Directors Bruce R. Chizen and George H. Conrades are
 22 named as defendants in the *Ozaki* action but are not named as defendants in the *Oracle Corporation*
 23 *Derivative Litigation*.) Both actions are purportedly brought on behalf of Oracle by alleged Oracle
 24 shareholders acting solely in their capacity as shareholders.

25 The complaints in both the *Oracle Corporation Derivative Litigation* and the *Ozaki* action
 26 allege that Oracle negotiated a software products and services contract with the federal government

27 _____
 28 ¹ The court appointed the attorneys for Plaintiffs Galaviz (Cotchett, Pitre & McCarthy, LLP) and Prince (Law
 Offices of John M. Kelson and Jerry K. Cimmet, Attorney at Law) co-lead counsel. Order, Section II.

1 through the General Services Administration. According to the allegations in both complaints, Oracle
 2 failed to provide accurate information to the federal government and failed to provide the agreed-upon
 3 pricing. The plaintiffs in both the *Oracle Corporation Derivative Litigation* and the *Ozaki* action
 4 assert that during the same relevant time period (1998 to 2006), Oracle Board members authorized or
 5 recklessly ignored the company's efforts to defraud the federal government. Further, both complaints
 6 rely on and recite allegations made by the plaintiff and the Department of Justice on behalf of the
 7 United States in a *qui tam* action, entitled *Frascella v. Oracle, et al.*, Case No. 1:07cv529 (LMB/TRJ),
 8 pending in the Eastern District of Virginia.

9 Due to their similarity, if not treated as related, these cases are likely to require substantial
 10 duplication of labor and expense and present a potential danger of inconsistent rulings regarding the
 11 same issues of law. Given the closely related nature of each of these cases, the treatment of these
 12 actions as related would serve the interests of judicial economy and avoid the potential for conflicting
 13 rulings.

14 Accordingly, the Plaintiffs in the *Oracle Corporation Derivative Litigation* ask this Court to
 15 enter an order relating the *Ozaki* action to the *Oracle Corporation Derivative Litigation* action.

16 Dated: September 15, 2011

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s/ John M. Kelson

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Attestation Pursuant to General Order No. 45

Pursuant to General Order No. 45, Section X. B., I, Jerry K. Cimmet, the filer of this Administrative Motion to Consider Whether Cases Should Be Related, hereby certify and attest that concurrence in the filing of the document has been obtained from Mark C. Molumphy and John M. Kelson.

I declare under penalty of perjury that the foregoing attestation is true and correct. Executed on September 15, 2011.

s/ Jerry K. Cimmet

JERRY K. CIMMET